



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0451]

RIN 1625-AA00

Safety Zone; Lower Mississippi River, Vidalia, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is extending an established safety zone for emergency purposes for all navigable waters of the Lower Mississippi River (LMR), extending the entire width from mile 311.0 to mile 317.0. This emergency safety zone is needed to protect persons, property, and flood control infrastructure from the potential safety hazards associated with vessels underway transiting this area with dangerously high water levels. Entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River or a designated representative.

**DATES:** This rule is effective from 5 p.m. on May 19, 2017 through 11:59 p.m. on June 2, 2017, or until the water levels have lowered to a less dangerous level, whichever occurs earlier. For the purposes of enforcement, actual notice will be used from May 19, 2017 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0451 in the “SEARCH” box

and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Ryan C. Thomas, U.S. Coast Guard; telephone 901-521-4825, e-mail Ryan.C.Thomas@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Lower Mississippi River
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the water levels have risen rapidly to dangerous levels and immediate action is needed to protect persons, and property during response efforts. Completing the full NPRM process is impracticable because we must establish this safety zone by May 19, 2017 and lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in **the Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed during the emergency operations in response to the higher than normal water levels on May 19, 2017.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Coast Guard received notification from the US Army Corps of Engineers reporting high water levels are present in the vicinity of mile marker (MM) 315.0 on the Lower Mississippi River (LMR) near the Old River Control structures. As a result, danger of collision with the structures exists and is likely. The COTP Lower Mississippi River is establishing this safety zone effective from 5 p.m. May 19, 2017 to 11:59 p.m. June 2, 2017 or until the water levels have lowered to a less dangerous level, whichever occurs earlier. This rule is needed to protect personnel, vessels, flood infrastructure, and the marine environment in the navigable waters within the safety zone while the high water levels are present.

### **IV. Discussion of the Rule**

The Coast Guard is establishing a temporary safety zone on the LMR from mile 311.0 to mile 317.0, extending the entire width of the river, from 5 p.m. May 19, 2017 through 11:59 p.m. on June 2, 2017 or until the water levels have lowered to a less dangerous level, whichever occurs earlier. Any vessel desiring to enter this safety zone must first obtain permission from the Captain of the Port Lower Mississippi River (COTP). The U.S. Army Corps of Engineers assist vessels present in the vicinity of the Old River Control Structure (WUG-424) have been delegated the authority to permit

entry into this safety zone.

Entry into this zone is prohibited unless permission has been granted by the COTP or a designated representative. Broadcast Notice to Mariners (BNM) will provide any changes in the schedule for this safety zone. Requests to enter the zone will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 1-901-521-4804 or can be reached by VHF-FM channel 16.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This emergency safety zone will restrict navigation on the Mississippi River from mile 311.0 to 317.0 near Vidalia, Louisiana for 14 days. Vessels will be allowed to transit the zone with direction from the COTP or its designated representative. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via

VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on

actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone that will prohibit entry into the zone unless permission has been granted by the COTP or a designated representative on the Mississippi River mile 311.0 to mile 317.0. It is categorically excluded from further review under paragraph L60 of Appendix A of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Temporary § 165.T08-0451 is added to read as follows:

**§ 165.T08-0451 Safety Zone; Mississippi River, Vidalia, LA**

(a) **Location.** The following area is an emergency safety zone: all navigable waters of the Mississippi River between mile 311.0 and mile 317.0, extending the entire width of the river.

(b) **Enforcement date.** This rule is effective from 5 p.m. on May 19, 2017 through 11:59 p.m. on June 2, 2017, or until the water levels have lowered to a less dangerous level, whichever occurs earlier. For the purposes of enforcement, actual notice will be used from May 19, 2017 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) **Regulations.** (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River (COTP) or a designated representative.

(2) The U.S. Army Corps of Engineers assist vessels present in the vicinity of the Old River Control Structures are designated representatives and may permit entry into this safety zone. They may be contacted on VHF-FM Channel 16 or Channel 13.



(d) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the emergency safety zone as well as any changes in the dates and times of enforcement.

Dated: May 19, 2017

T. J. Wendt,  
Captain, U.S. Coast Guard,  
Captain of the Port, Lower Mississippi River  
[FR Doc. 2017-11462 Filed: 6/1/2017 8:45 am; Publication Date: 6/2/2017]